

Bob BRISCOE, et al.
Serial No. 10/593,423
November 16, 2011

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

In response to the formality-based objections to claim 1, an inadvertent typographical error in claim 1 has been corrected (namely, the term “units” has been deleted). Claim 1 and all other independent claims have also been amended so as to make it even clearer that the initial condition assigned in respect of previous data is the initial condition provided by the provider node. This comes close to adopting the Examiner’s suggestion, except that the word “previous” is retained since that is material to the intended meaning of this overall recitation.

The Examiner’s objection to the phrase “the event” coupled with a suggestion that it should be revised to read “an event” is respectfully traversed. The actual phrase at issue reads “in the event that”. As natural English speakers well understand, the phrase “in the event that” is equivalent to the single word “if” – and perhaps other phrases connoting a conditional function. That is, in the case of claim 1, it is only “in the event that” or “if” the provider node receives discrepancy information from the receiver node (the discrepancy data being as defined further along in the same claim clause) that a different initial condition is assigned to the path characterization metric in respect of subsequent data provided by the provider node.

A few pages from a Google search on the phrase “in the event that” are attached to help the Examiner understand that native English speakers readily understand the phrase

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“in the event that” – and that such a phrase is considered to be entirely grammatical and correct and clear in meaning. Should the Examiner wish to replace the phrase in claim 1 and other claims with the single word “if” or some other equivalent word or phrase, then it is requested that the undersigned be telephoned for prompt resolution.

The Examiner’s similar formality-based objection to the phrase “in the event that” appearing in claims 4, 11, 13, 15, 16, 19, 20, 23, 24, 26 and 28 is also respectfully traversed for the same reasons as just explained.

In response to the Examiner’s formality-based objection to claim 5, the recommended change of “the possibility” to “a possibility” has been adopted – albeit once again, it is not believed necessary.

The Examiner’s formality-based objections to claim 9 are not understood. For example, claim 9 correctly does not use the word “units”. In any event, independent claim 9 has been amended similarly to all other independent claims as noted above.

With respect to the latter half of the Examiner’s formality-based objection to claim 11, it is respectfully noted that the language set forth between quotation marks as allegedly coming from claim 11 does not actually conform to the exact language of the claim. Furthermore, the recitation of “the initial condition assigned in respect of previous data” is entirely correct (e.g., note antecedent basis for “the initial condition” recited as “an initial condition” at lines 5-6 of claim 11).

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With respect to the second half of the formality-based objection to claim 20, this objection is respectfully traversed. The recitation of the initial condition assigned in respect of previous data is entirely correct – and has been clarified to note that the previous data is that which was provided by said provider node.

With respect to the last half of the formality-based objections to claim 24 regarding “previous” data, the same comments apply as noted above with respect to claim 20.

With respect to the second formality-based objection to claim 26, the Examiner’s proposed change of “said subsequent data” to “said further data” has been adopted.

With respect to the third formality-based objection to claim 26, this is respectfully traversed for reasons already noted above regarding “the event” versus “an event” and the like. The recitation in claim 26 already makes it clear that the initial condition assigned in respect of said further data differs from the initial condition assigned in respect of previous data provided by the provider node, by a difference that is dependent upon said discrepancy information. There does not appear to be any ambiguity, lack of grammar or the like associated with this recitation, and it is believed to be entirely correct as it now stands.

With respect to the second formality-based objection to claim 28, the same comments apply as just noted above with respect to claim 26.

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Accordingly, all outstanding formality-based issues are now believed to have been resolved in the applicants' favor. Should the Examiner disagree, then it is respectfully requested that the undersigned be telephoned for prompt resolution.

The Examiner's rejection of claims 1, 3, 6, 9-12, 14-16, 20-23 and 28-29 under 35 U.S.C. §102 as allegedly anticipated by Honeisen '332 is respectfully traversed.

The Examiner explains (at the bottom of page 5 of the last office action) that the "AMR_MASK" value in Honeisen's SIP INVITE message is regarded as corresponding to the "path characterization metric" part of the "data" referred to in claim 1. The "initial value" assigned to it is then asserted to be the value "11111111", indicating that the entity "UE1" is able and willing to support "all eight AMR bit rates". As the SIP INVITE message travels through the network towards entity "UE2", entities it passes along the way (e.g., "P-CSCF1", "S-CSCF1", etc.) may modify the value to indicate any AMR bit rates that they do not support. The final value ("01001011" for example) is then sent back from UE2 to UE1. The difference between "11111111" and "01001011" is asserted by the Examiner to indicate a discrepancy between a "target condition" (i.e., the value meaning "all bit rates supported") and the actual value as it stood when the SIP INVITE message reached UE2 (the value meaning "the remaining bit rates for which no entity has indicated its lack of support").

The Examiner then argues that in generating a new message with an SDP body that indicates which codec is to be used for the session, UE1 acts to (in the words of applicants' claim 1):

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“...assign a different initial condition to the path characterization metric in respect of subsequent data provided by it in the event that it receives discrepancy information from said receiver node, the initial condition assigned in respect of said subsequent data differing from the initial condition assigned in respect of previous data by a difference dependent on said discrepancy information.”

This is incorrect. In fact, UE1 is assigning a condition to a different metric, rather than assigning a different initial condition to the same metric.

Looking at this issue in more detail, claim 1 requires that the provider node is arranged to assign

*“a different initial condition to **the** path characterization metric in respect of subsequent data provided by it”*

if it has received discrepancy information from the receiver node. As the Examiner will understand, the word “the” indicates that this phrase refers to the same path characterization metric as has been referred to previously in the claim. This is, therefore, the path characterization metric whose initial condition is assigned by the provider node, and the condition of which may be updated by the intermediate nodes.

In relation to the above, the Examiner has chosen, in the early part of his analysis, to regard the “AMR_MASK” value in Honeisen’s SIP INVITE message as corresponding to the “path characterization metric” part of the “data” referred to in claim 1. This means that the

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Examiner is regarding Honeisen's equivalent of the "path characterization metric" as characterizing the "AMR bit rates" that the UE1 is able and willing to support (i.e., "all eight AMR bit rates").

The Examiner is free, of course, to attempt an analysis on this basis. But the applicants point out that, strictly-speaking, the "AMR_MASK" value is, in fact, a "request", rather than a "path characterization metric".

Regardless of whether or not it is correct to regard the "AMR_MASK" value as being a "path characterization metric", once chosen as corresponding to the "path characterization metric", the analysis must be consistent in that respect for the whole analysis.

Later in the same analysis, however, the Examiner instead attempts to regard the information included by UE1 in the SDP body, indicating "*which codec is to be used initially in the session*" as corresponding to the "path characterization metric" of claim 1. The Examiner relied upon the following paragraphs from Honeisen:

[0105] Taking into consideration both the capabilities of the communication devices UE1 and UE2 and the capabilities of the network the UE1 now decides the codec and the codec option (if any) to be used initially in the (audio) session. For example, the UE1 may decide that the AMR codec is to be used initially in the session. From the codec options, the UE1 may decide that the AMR codec bit rate 10.2 kbps (mode 1) is to be used initially.

[0106] Now, the UE1 generates the third message (Final SDP or a corresponding message). Again, this is a SIP message containing SIP header fields and an SDP body. The UE1 includes in the SDP body information on which codec is to be

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used initially in the session. If the chosen codec is the AMR codec, as it is in this case, the UE1 also includes in the SDP body information on which AMR bit rate is to be used initially. Also, other information relating to codecs may be conveyed in the third message, for example additional information about other bit rates and other codecs that may be used. Thus, if the codec and/or bit rate has to be changed during the established session the possible choices would already be known to the UE1 and the UE2.

From this, it is clear that the information included in the SDP body is not characterizing the same sort of information, let alone the same path characteristic, as the “AMR_MASK” value, as will be understood from each of the following differences:

- The “AMR_MASK” value in the “first message” by UE1 is essentially a request, sent in order to ascertain which of a plurality of possible codecs may be used in a session, whereas the information included in the “third message” by UE1 is information concerning a decision that has been taken as a result of a reply to the request, specifying “which codec is to be used in the session”.
- They are not even carried in the same manner, one being carried in the SIP header, while the other is carried in the SDP body.
- Finally, there is no suggestion that the condition of the information included by UE1 in the SDP body is ever, or can be “updated” by the intermediate nodes.

For at least all of the above reasons, it is, therefore, clear that Honeisen does not, in fact, disclose a method corresponding to that of claim 1 – and the analysis is similarly deficient in relation to the other independent claims. Honeisen is lacking at least in relation to the critical combination of features/steps of claim 1 and the other independent claims

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that allow path characterization information effectively to be normalized with respect to the receiver rather than with respect to the sender (as is the case in prior art techniques). There is no suggestion that the skilled person would be motivated by anything in Honeisen to look in any of the other citations for a way of achieving this – and even if they did, none of the other citations provides anything of relevance to this issue anyway.

The target condition in Honeisen is also not predetermined. It is determined by each sender on a case by case basis. In the example it is "11111111" but in each case it would relate to whatever codecs the sender supports.

The feedback is not a 'discrepancy' from '11111111'. If the sender sends '11111111' and the path supports '01001011' the feedback is merely the value that the path supports, not the discrepancy between what the path supports and '11111111'.

This is proved further by the case where the sender subsequently sends '01001011'. Then the feedback is still '01001011'. Whereas if the feedback were a discrepancy, it would change between the sender correctly and incorrectly predicting the path characteristic.

In short, the metric set by the Honeisen sender at the beginning of the second pass is not the same as the metric set by the Honeisen sender at the beginning of the first pass. There is no "predetermined target condition" in Honeisen.

Given the fundamental deficiencies of Honeisen already noted with respect to the independent claims, it is not necessary at this time to detail additional deficiencies of

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Honeisen with respect to other aspects of the rejected claims. Suffice it to note that, as a matter of law, it is impossible to support even a *prima facie* case of anticipation unless a single instance of prior art teaches each and every feature of each rejected claim.

The rejection of claims 2 and 7-8 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen in view of Cain ‘469 is also respectfully traversed.

Fundamental deficiencies of Honeisen have already been noted above with respect to a parent claim. Cain does not supply those deficiencies and, accordingly, it is not necessary at this time to detail additional deficiencies of this allegedly “obvious” Honeisen/Cain combination with respect to other aspects of these rejected claims.

The rejection of claims 4-5 and 13 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen in view of Kal ‘311 is also respectfully traversed.

Once again, fundamental deficiencies of Honeisen have already been noted above with respect to a parent claim. Kal does not supply those deficiencies and, accordingly, it is not necessary at this time to detail additional deficiencies of this allegedly “obvious” combination of references with respect to other aspects of these rejected claims.

The rejection of claims 17-19 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen in view of Tanaka ‘538 is also respectfully traversed.

Fundamental deficiencies of Honeisen having already been noted above with respect to a parent claim, and Tanaka not supplying even those deficiencies, then it is not necessary

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at this time to further burden the record with respect to additional deficiencies of this allegedly “obvious” combination of references with respect to the additional aspects of these rejected claims.

The rejection of claims 24-27 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen in view of Karagiannis ‘395 is likewise respectfully traversed – for the same reasons.

Indeed, the Examiner’s attempt to find various detailed features of applicants’ dependent claims by finding multiple different combinations of references itself reveals the non-obviousness and patentable distinction of claimed subject matter in these dependent claims *vis-à-vis* the cited prior art. In particular, a proper, objective, factual analysis under *Graham v. Deere* (or KSR) does not permit undue use of hindsight. Here, it is clear that the Examiner has used a mechanized search engine with the applicants’ own claim words as input to scour literally thousands of prior art documents in the hope of finding isolated words and/or phrases here and there that might then be with hindsight cobbled together and argued as having been “obvious” to one of ordinary skill in the art before the applicants’ invention was known. Clearly, that cannot be the case here.

In any event, the deficiencies of the primary Honeisen reference are so fundamental and abundant that it is not necessary to provide further detailed discussion of the numerous additional “obviousness” combinations now proposed by the Examiner.

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Accordingly, this entire application is now believed to be in allowable condition, and a formal notice to that effect is earnestly solicited.

Respectfully submitted,

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in the event of something

if something happens; on the chance that something happens. *In the event of his late arrival, please call me. In the event of rain, the parade is canceled.*

See also: [event](#)

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in the event of something also in the event that something happens

if something should happen *In the event of war, we have to be prepared to send in troops. Travel insurance protects you in the event that you have to cancel your trip.*

Usage notes: sometimes used in the form *in the unlikely event (if something should happen that you do not expect to happen); In the unlikely event of a fire, alarms will sound and you should exit immediately.*

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I knew that our worthy captain, who felt, such a paternal solicitude for the welfare of his crew, would not willingly consent that one of his best hands should encounter the perils of a sojourn among the natives of a barbarous island; and I was certain that in the event of my disappearance, his fatherly anxiety would prompt him to offer, by way of a reward, yard upon yard of gaily printed calico for my apprehension.

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We will take good care of them, and in the event of war return them to the arsenal.

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Isabel, at Miss Pink's intercession, was induced to accept her lover's excuses, and, **in the event of** her favorable reception by Hardyman's parents at the farm, to give her consent (not very willingly even yet) to hastening the ceremony which was to make her Hardyman's wife.

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in the driver's seat	in the event	in the face
in the dumps	in the event	in the face
in the end	in the event	in the face of
in the event of	in the event	in the fad
in the eyes of	in the extreme	in the family
in the eyes of the law	in the eye of the wind	In the family way
in the face of	in the eye of the wind	In the family way
in the family	in the eye of the wind	In the family way
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